THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.7341 OF 2006

Dated 27th June 2006

Between:

The Principal Secretary to Government,
Intermediate Education Department,
Government of Andhra Pradesh,

Secretariat, Hyderabad and four others.

… Petitioners.

And

G. Guruvaiah, S/o G. Govindaiah, 33 years,
SGBT Teacher, Mandal Parishad, Punganur,

Chittoor District and another.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.7341 OF 2006

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

This Writ Petition is at the instance of the Principal Secretary to the Government, Intermediate Education Department, Government of A.P. along with other connected authorities, under Article 226 of the Constitution of India seeking for a Mandamus challenging the correctness of the order dated 02.12.1999 in O.A.No.4672 of 1995 on the file of A.P Administrative Tribunal, Hyderabad to the Presidential Order and the decision of the Supreme Court and consequently to uphold the validity of Rule 3(8)(ii) of G.O.Ms.No.302, Education (I.E.I) Department, dt.30.12.1993.

Heard the learned Government Pleader for Higher Education appearing on behalf of the petitioners at length.

At the outset, this Writ Petition is being filed on 12.04.2006 i.e., after above six years and four months.

The facts, in brief, are that the first respondent herein, who has been working as Secondary Grade Teacher under the control of Mandal Parishad, Punganooru, Chittooru District having qualification of 'M.A., Ph.D., and worked for 11 years, filed this O.A. No.4672 of 1995 questioning Rule 3 (8) (ii) (b) of A.P Intermediate Education

Service Rules in G.O.Ms.No.302, Education Department, dated 30.12.1993 including non-teaching staff for appointment to the post of Junior Lecturers to the extent of 10% posts on transfer by promotion and not providing at ratio to the Secondary Grade teachers for the post of Lecturers in Junior Colleges and Lecturers in D.I.E.T in the quota of promotion by transfer in A.P State Education Subordinate Service Rules in G.O.Ms.No.40, Education Department, dated 07.12.1997 as arbitrary, *inter alia*, on various grounds and further seeking a direction to provide a channel to Secondary Grade teachers for appointment as Junior Lecturers by revising the ratio to 30% for direct recruits, 50% to the School Assistants, 20% to the Secondary Grade teachers under rule 3 of G.O.Ms.No.302, dated 30.12.1993 and 10% for the appointment as Lecturers in D.I.E.Ts. and up to 20% in case of non-availability of qualified School Assistants. Similarly, along with the first respondent herein, several other employees from various departments who were also not forming the feeder cadre for the post of Junior Lecturers like in the Social Welfare Department, Revenue Department and Tribal Welfare Ashram Schools etc., and certain persons who worked as Head Masters, School Assistants etc., filed other connected O.A.Nos.4728, 5182, 5934 and 5417 of 1995, 4590 of 1994, 128 of 1994, 7345, 7450 and 7931 of 1996, 3350, 519, 4947 and 81 of 1997, 1320 of 1994, 6497 of 1996, 23 of 1997 and 24 of 1997.

In all these applications, the petitioners herein filed the counter-affidavits who appeared therein as respondents and contested the cases, *inter alia,* denying their claim and stating that their posts cannot be considered to the feeder cadre for the post of Junior Lecturers in Government Junior Colleges, having regard to the various circumstances and reasons as pointed out therein and the various orders issued in G.O.Ms.No.939, Education Department dated 19.09.1973 and the recruitment rules. Hence, no relief as such can be granted. However, after hearing both the sides, after contest on merits and by taking into consideration the various submissions made across the Bar from both the sides, ultimately the Administrative Tribunal by Order dt.09.12.1999 allowed all these applications upholding their claim. And yet, there is no serious dispute that no challenge was made by the petitioners by availing any remedy as against the findings arrived at by the Tribunal in that batch of cases. But, it is to be noted that only some of the employees filed the Writ Petition in W.P.No.21648 of 2000 challenging the said orders of the Tribunal dated 02.12.1999. Ultimately, this Court dismissed the said Writ Petition by order dated 08.03.2001 refusing to interfere with the findings as arrived at by the Tribunal. Again, the said orders have remained unchallenged either by the petitioners in the Writ Petition or

by the petitioners herein and thus, these orders were become final, conclusive and binding. That apart, the Government did act on the said orders and the findings of the Tribunal as confirmed by this Court and they constituted a six member official committee in G.O.Ms.No.411, Higher Education Department, dated 22.06.2002 for examining the issue relating to the amendment of special Rules for earmarking 50% of vacancies for the post of Junior Lecturers from the feeder cadre of School Assistants of various departments. After holding due deliberations on 22.06.2002, the committee submitted report to the Court recommending the Government to amend Rule 3(8) (ii) of the aforesaid Rule in G.O.Ms.No.302, dt.30.12.1993 for recruitment by transfer under 40% quota in respect of the teaching staff. Thereafter, the General Administration Department (Ser), who were consulted in the matter of implementation of the Tribunal order, informed that the Supreme Court of India, in Civil Appeal Nos.9643-9644 of 1995, dated 07.11.2001, held that the Presidential Order prohibits the consideration of the feeder cadre from other Units for the promotional post organized in local cadres. In Social Welfare Department, local cadres have been organized in pursuance of presidential order.

On 25.07.2005, the State Government reconstituted the teachers working in Mandal Parishad and Zilla Parishad under service

rules G.O.Ms.No.95/2005 and G.O.Ms.No.96/2005 of even date. Later on, the matter was addressed to the Central Government for necessary approval of the Presidential Order and the same is still pending. Therefore, the Government has issued instructions to stop the appointment or transfer of the concerned officers localized under Presidential Orders in the districts, till further orders in view of the Supreme Court's decision. Therefore, there has been delay in filing the Writ Petition in challenging the said orders dt.02.12.1999. Since the questions now raised are substantial and go to the very root of the case and especially against the Presidential Order, the orders of the Tribunal require to be interfered with. Further, one of the applicants has filed a contempt case before the Tribunal, the same requires to be stalled. Hence, the Writ Petition.

Having heard the learned Government Pleader for Higher Education appearing on behalf of the petitioners and on perusal of the material and on a reading of the affidavit filed in support of the Writ Petition, the tell tale of the case is that admittedly, the orders of the Tribunal as early as dt.02.12.1999 have remained unchallenged in spite of the fact that all the petitioners, who are not only the higher up officials in the administration but also a responsible one did not bother to challenge even though some other persons choose to approach this

Court unsuccessfully. Nothing stopped the petitioners herein in filing their own writ. Thus, the orders of the Tribunal as well as that of this Court dt.08.03.2001 both have become final. It is not the case of the petitioners that the orders of the Administrative Tribunal were not served or that they were not aware of the same. Further, it is not their case that they are not parties to the Writ Petition in W.P.No.21648 of 2000 disposed of on 08.03.2001. Either way, the petitioners are fully posted with knowledge. Another interesting feature of the case is that subsequent to the orders of the Tribunal, the petitioners did themselves act upon the orders and constituted a six member official committee vide G.O.Ms.No.40, dated 07.02.1992, who submitted a report after due deliberations. Even during these deliberations or after filing of report, the petitioners kept a total silence and remained unmoved. The official machinery cannot plead lack of awareness, knowledge or want of application of mind. Therefore, from these facts, it is clearly evident that in spite of the orders of the Tribunal and this Court, the petitioners did maintain a long lull and without any proper explanation even in the affidavit filed in support of this petition, there is absolutely no explanation for the delays and latches. Apart from lack of any justification or sufficient grounds, there is no attempt to explain. This itself shows a casual approach without any seriousness on their

part or realization of responsibility. The petitioners can neither seek any exemption nor entitled for any indulgence. The deliberations, inaction and participation in the later writ proceedings and above all they themselves going in their way, though the proceedings of the Committee show a clear lack of seriousness on their part. We do not find one good reason as to why the petitioners could not approach this Court. No blame is attributed against anyone for such inaction. The petitioners themselves have to be blamed. Merely because there is no period of limitation prescribed for invoking jurisdiction under Article 226 of the Constitution of India, does not either vest any right or give any leverage for enabling them to come at any point of time. Time and again, this Court reiterated that those who sleep over will not be disturbed. Even other-wise, the petitioners have hopelessly failed to make out semblance of a reason and the affidavit is kept silent for their own reasons. Hence, we are of the opinion that this is not a fit case to any stretch of discretion to entertain the Writ Petition.

Though an attempt was made by the learned Government Pleader by placing reliance on the decisions reported in **Competent Authority Vs. Barangore Jute Factory** [1], **Cyril Lasrado Vs. Juliana Maria Lasrado** [2], and **Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde** [3] to press into service the ground that

even long delays of this nature can be condoned and in fact were condoned by the Apex Court. Therefore, having regard to the facts and circumstances, this case is also a fit one for similar such exercise of discretion. On a perusal of each of the said decision, they do not stand any way nearer to the present facts and in the given circumstances having satisfied as to the sufficiency of the reasons and the surrounding circumstances, the delays were condoned, however, the present case stands totally on a different footing and the chequered events namely the order of the Tribunal and the orders of this Court, appointing a committee by them etc., would directly stare at the petitioners and go against themselves. This is not a case where no development has taken place subsequent to the orders of the Tribunal and therefore, the petitioners could possibly be said to have had an advantage of inaction on the part of the respondents or otherwise. Even at this juncture, the only reason shown for taking the present step of filing this Writ Petition is only to the filing of the contempt proceedings by one of the applicants in the O.A. before the Tribunal. It is quite surprising to note that the petitioners could suddenly wake themselves only when a contempt proceeding was initiated. Such procedure cannot be encouraged with nor would confer any right as such on the petitioners to knock the doors of the justice at such a

belated hour. Hence, we do not find any merits in the Writ Petition.

The Writ Petition is accordingly dismissed at the admission stage with costs of Rs.10,000/- (Rupees ten thousand only).

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B. PRAKASH RAO, J

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RAMESH RANGANATHAN, J

27th June 2006.

Chvn.

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[1] (2005) 13 Supreme Court Cases 477

[2] (2004) 7 Supreme Court Cases 431

[3] 1995 Supp. (2) Supreme Court Cases 549